

1 Daniel J. O'Connor, Jr., Bar No. 010081

2 Karen J. Stillwell, Bar No. 022711

3 **O'CONNOR & CAMPBELL, P.C.**

4 7955 South Priest Drive

5 Tempe, Arizona 85284

6 daniel.oconnor@occlaw.com

7 karen.stillwell@occlaw.com

8 (602) 241-7000

9 Attorneys for Defendant LG Chem, Ltd.

10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT OF ARIZONA**

12 State Farm Fire And Casualty
13 Company, an Illinois Corporation,

14 Plaintiff,

15 vs.

16 Amazon.com, Inc., a Delaware
17 corporation; LG Company (Korea) a
18 foreign partnership, corporation, or
19 other business entity; LG Chem
20 Company (Korea), a foreign
21 partnership, corporation, or other
22 business entity; Super Engine, a
23 corporation, partnership, or other
24 business entity; Easycredit Trade
25 Hongkong Co., Limited dba Super
26 Engine, a foreign corporation,
partnership, or other business entity;
John Does and Jane Does I-V,
husbands and wives; Black
Partnerships I-V; and White
Corporations I-V,

Defendants.

Case No.: 2:17-cv-01994-JAT

**DEFENDANT LG CHEM, LTD.'S
ANSWER TO PLAINTIFF'S FOURTH
AMENDED COMPLAINT**

1 Defendant LG Chem, LTD. ("LG Chem") answers Plaintiff's Fourth
2 Amended Complaint as follows:

3 **GENERAL AND FACTUAL ALLEGATION**

4 1. In response to Paragraph 1 of Plaintiff's Fourth Amended Complaint,
5 LG Chem admits only that Plaintiff is an Illinois corporation. LG Chem denies it
6 caused any damages claimed in this case. LG Chem lacks knowledge or
7 information sufficient to form a belief about the truth of the remaining allegations
8 in Paragraph 1 and, therefore, denies them and demands strict proof thereof.

9 2. In responses to Paragraph 2 of Plaintiff's Fourth Amended
10 Complaint, these allegations are directed to entities other than LG Chem and no
11 answer from LG Chem is required. To the extent any allegation is directed to LG
12 Chem, LG Chem denies them and demands strict proof thereof.

13 3. In responses to Paragraph 3 of Plaintiff's Fourth Amended
14 Complaint, LG Chem admits only that LG Chem, Ltd. is a Korean corporation. LG
15 Chem denies all other allegations set forth in Paragraph 3 of Plaintiff's Fourth
16 Amended Complaint.

17 4. In response to Paragraph 4 of Plaintiff's Fourth Amended
18 Complaint, LG Chem admits only that LG Chem, Ltd. is a Korean corporation. LG
19 Chem denies all other allegations set forth in Paragraph 4 of Plaintiff's Fourth
20 Amended Complaint.

21 5. In response to Paragraph 5 of Plaintiff's Fourth Amended Complaint,
22 these allegations are directed to entities other than LG Chem and no answer
23 from LG Chem is required. To the extent any allegation is directed to LG Chem,
24 LG Chem denies them and demands strict proof thereof.

25 6. In response to Paragraph 6 of Plaintiff's Fourth Amended Complaint,
26 these allegations are directed to entities other than LG Chem and no answer

1 from LG Chem is required. To the extent any allegation is directed to LG Chem,
2 LG Chem denies them and demands strict proof thereof.

3 7. In response to Paragraph 7 of Plaintiff's Fourth Amended Complaint,
4 these allegations are directed to entities other than LG Chem and no answer
5 from LG Chem is required. To the extent any allegation is directed to LG Chem,
6 LG Chem denies them and demands strict proof thereof.

7 8. In response to Paragraph 8 of Plaintiff's Fourth Amended Complaint,
8 the allegations set forth therein are conclusions of law to which no response is
9 required. To the extent an answer is necessary, LG Chem lacks knowledge or
10 information sufficient to form a belief about the truth of the remaining allegations
11 in Paragraph 8 and therefore denies them.

12 9. In response to Paragraph 9 of Plaintiff's Fourth Amended Complaint,
13 these allegations appear to be directed at entities other than LG Chem and no
14 answer from LG Chem is required. Notwithstanding, LG Chem denies the
15 allegations set forth in Paragraph 9 of Plaintiff's Fourth Amended Complaint and
16 demands strict proof thereof.

17 10. LG Chem denies the allegations set forth in Paragraph 10 of
18 Plaintiff's Fourth Amended Complaint and demands strict proof thereof.

19 11. In response to Paragraph 11 of Plaintiff's Fourth Amended
20 Complaint, LG Chem lacks knowledge or information sufficient to form a belief as
21 to the truth of the allegations related to Plaintiff's and its experts' actions and,
22 therefore, deny the same and demand strict proof thereof. LG Chem specifically
23 denies any wrongdoing as alleged in Paragraph 11 of Plaintiff's Fourth Amended
24 Complaint.

25 12. In response to Paragraph 12 of Plaintiff's Fourth Amended
26 Complaint, LG Chem lacks knowledge or information sufficient to form a belief as

1 to the truth of the allegations related to Plaintiff's and its experts' actions and,
2 therefore, deny the same and demand strict proof thereof. LG Chem specifically
3 denies any wrongdoing as alleged in Paragraph 12 of Plaintiff's Fourth Amended
4 Complaint.

5 **COUNT I (Strict Liability)**

6 13. In response to Paragraph 13 of Plaintiff's Fourth Amended
7 Complaint, LG Chem incorporates by reference its responses to all other
8 paragraphs of the Fourth Amended Complaint as if fully set forth herein.

9 14. In response to Paragraph 14 of Plaintiff's Fourth Amended
10 Complaint, to the extent the allegations are directed to LG Chem, LG Chem
11 denies the allegations set forth therein and demands strict proof thereof.

12 15. In response to Paragraph 15 of Plaintiff's Fourth Amended
13 Complaint, to the extent the allegations are directed to LG Chem, LG Chem
14 denies the allegations set forth therein and demands strict proof thereof.

15 16. In response to Paragraph 16 of Plaintiff's Fourth Amended
16 Complaint, to the extent the allegations are directed to LG Chem, LG Chem
17 denies the allegations set forth therein and demands strict proof thereof.

18 17. In response to Paragraph 17 of Plaintiff's Fourth Amended
19 Complaint, to the extent the allegations are directed to LG Chem, LG Chem
20 denies the allegations set forth therein and demands strict proof thereof.

21 18. In response to Paragraph 18 of Plaintiff's Fourth Amended
22 Complaint, LG Chem denies the allegations set forth therein and demands strict
23 proof thereof.

COUNT II (Negligence)

19. In response to Paragraph 19 of Plaintiff's Fourth Amended Complaint, LG Chem incorporates by reference its responses to all other paragraphs of the Fourth Amended Complaint as if fully set forth herein.

20. In response to Paragraph 20 of Plaintiff's Fourth Amended Complaint, to the extent the allegations are directed to LG Chem, LG Chem denies the allegations set forth therein and demands strict proof thereof.

21. In response to Paragraph 21 of Plaintiff's Fourth Amended Complaint, LG Chem denies the allegations set forth therein and demands strict proof thereof.

COUNT III (Breach of Express Warranties)

22. In response to Paragraph 22 of Plaintiff's Fourth Amended Complaint, LG Chem incorporates by reference its responses to all other paragraphs of the Fourth Amended Complaint as if fully set forth herein. LG Chem further incorporates its Partial Motion to Dismiss filed contemporaneously herewith.

23. In response to Paragraph 23 of Plaintiff's Fourth Amended Complaint, to the extent the allegations are directed to LG Chem, LG Chem denies the allegations set forth therein and demands strict proof thereof.

24. In response to Paragraph 24 of Plaintiff's Fourth Amended Complaint, LG Chem denies the allegations set forth therein and demands strict proof thereof.

COUNT IV (Breach of Implied Warranties)

25. In response to Paragraph 25 of Plaintiff's Fourth Amended Complaint, LG Chem incorporates by reference its responses to all other paragraphs of the Fourth Amended Complaint as if fully set forth herein. LG

1 Chem further incorporates its Partial Motion to Dismiss filed contemporaneously
2 herewith.

3 26. In response to Paragraph 26 of Plaintiff's Fourth Amended
4 Complaint, to the extent the allegations are directed to LG Chem, LG Chem
5 denies the allegations set forth therein and demands strict proof thereof.

6 27. In response to Paragraph 27 of Plaintiff's Fourth Amended
7 Complaint, to the extent the allegations are directed to LG Chem, LG Chem
8 denies the allegations set forth therein and demands strict proof thereof.

9 28. In response to Paragraph 28 of Plaintiff's Fourth Amended
10 Complaint, LG Chem denies the allegations set forth therein and demands strict
11 proof thereof.

12 **COUNT V (Negligent Misrepresentation)**

13 29. In response to Paragraph 29 of Plaintiff's Fourth Amended
14 Complaint, LG Chem incorporates by reference its responses to all other
15 paragraphs of the Fourth Amended Complaint as if fully set forth herein. LG
16 Chem further incorporates its Partial Motion to Dismiss filed contemporaneously
17 herewith.

18 30. In response to Paragraph 30 and its subparts of Plaintiff's Fourth
19 Amended Complaint, LG Chem denies the allegations set forth therein and
20 demands strict proof thereof.

21 **COUNT VI (Consumer Fraud)**

22 31. In response to Paragraph 31 of Plaintiff's Fourth Amended
23 Complaint, LG Chem incorporates by reference its responses to all other
24 paragraphs of the Fourth Amended Complaint as if fully set forth herein. LG
25 Chem further incorporates its Partial Motion to Dismiss filed contemporaneously
26 herewith.

1 32. In response to Paragraph 32 and its subparts of Plaintiff's Fourth
2 Amended Complaint, LG Chem denies the allegations set forth therein and
3 demands strict proof thereof.

4 **COUNT VII (Aiding and Abetting)**

5 33. In response to Paragraph 33 of Plaintiff's Fourth Amended
6 Complaint, LG Chem incorporates by reference its responses to all other
7 paragraphs of the Fourth Amended Complaint as if fully set forth herein.

8 34. This cause of action is not asserted against LG Chem and therefore
9 does not require a response. To the extent any allegation is directed to LG
10 Chem, LG Chem denies the allegation(s) and demands strict proof thereof.

11 35. In response to Plaintiff's Prayer for Relief, LG Chem denies that
12 Plaintiff is entitled to any recovery from LG Chem whatsoever.

13 36. LG Chem denies each and every allegation that is not expressly
14 admitted herein.

15 **AFFIRMATIVE DEFENSES**

16 37. As and for a separate and affirmative defense, and in the alternative,
17 LG Chem denies liability, causation and damages and/or the nature and extent of
18 Plaintiff's or its insured's injuries and/or damages, if any, and requires strict proof
19 thereof.

20 38. As and for a separate and affirmative defense, and in the alternative,
21 LG Chem alleges that Plaintiff's Complaint fails to state a claim upon which relief
22 can be granted against LG Chem.

23 39. As and for a separate and affirmative defense, and in the alternative,
24 LG Chem alleges Plaintiff's or its insured's claims against LG Chem fail because
25 LG Chem did not design, manufacture, or sell the hoverboard at issue.
26

1 40. As and for a separate and affirmative defense, and in the alternative,
2 LG Chem alleges some or all of Plaintiff's or its insured's claims against LG
3 Chem may be barred by failure or lack of privity of contract.

4 41. As and for a separate and affirmative defense, and in the alternative,
5 LG Chem alleges that Plaintiff or its insured cannot and has not properly
6 asserted a claim for Breach of Express Warranty against LG Chem. LG Chem
7 incorporates its contemporaneous Partial Motion to Dismiss herein by reference.

8 42. As and for a separate and affirmative defense, and in the alternative,
9 LG Chem alleges that Plaintiff or its insured cannot and has not properly
10 asserted a claim for Breach of Implied Warranties claim against LG Chem. LG
11 Chem incorporates its contemporaneous Partial Motion to Dismiss herein by
12 reference.

13 43. As and for a separate and affirmative defense, and in the alternative,
14 LG Chem alleges that Plaintiff or its insured cannot prove the elements required
15 for Negligent Misrepresentation. LG Chem incorporates its contemporaneous
16 Partial Motion to Dismiss herein by reference.

17 44. As and for a separate and affirmative defense, and in the alternative,
18 LG Chem alleges that Plaintiff or its insured cannot and have not properly
19 asserted a claim for Consumer Fraud claim against LG Chem. LG Chem
20 incorporates its contemporaneous Partial Motion to Dismiss herein by reference.

21 45. As and for a separate and affirmative defense, and in the alternative,
22 Plaintiff's or its insured's claims are barred, in whole or in part, because LG
23 Chem at all relevant times acted in good faith and without malice, willfulness or
24 intent to injure or harm Plaintiff in any way.

25 46. As and for a separate and affirmative defense, and in the alternative,
26 LG Chem alleges that Plaintiff or its insured failed to appropriately and

1 adequately mitigate, obviate, diminish or otherwise act to lessen or reduce its
2 damages, thus barring or reducing its recovery against LG Chem.

3 47. As and for a separate and affirmative defense, and in the alternative,
4 LG Chem alleges that Plaintiff or its insured were contributory negligent and/or
5 any damages received by Plaintiff or its insured were the result of an
6 intervening/superseding cause or occurred as a result of the negligence of
7 someone other than LG Chem, all of which bars recovery to Plaintiff herein from
8 LG Chem.

9 48. As and for a separate and affirmative defense, and in the alternative,
10 LG Chem alleges that Plaintiff or its insured were negligent, in whole or in part,
11 thereby reducing or eliminating any damages owing by LG Chem by way of
12 comparative negligence.

13 49. As and for a separate and affirmative defense, and in the alternative,
14 LG Chem alleges that if, indeed, they are determined to be liable for the
15 allegations contained in Plaintiff's Complaint, then LG Chem is entitled to
16 contribution from other defendants unnamed, by way of the Doctrine of
17 Contribution.

18 50. As and for a separate and affirmative defense, and in the alternative,
19 LG Chem alleges that Plaintiff or its insured assumed the risk of his damages,
20 ignored an open and obvious danger, acted in direct and intentional violation of
21 Arizona law, and acted intentionally and knowingly, jeopardizing his safety and
22 well-being, all of which bar recovery or reduce recovery to Plaintiff herein from
23 LG Chem.

24 51. As and for a separate and affirmative defense, and in the alternative,
25 LG Chem alleges that Plaintiff's or its insured's claim is barred, or, alternatively,
26

1 that Plaintiff's or its insured's damages must be reduced due to the applicability
2 of the Doctrine of Mitigation of Damages and avoidable consequences.

3 52. As and for a separate and affirmative defense, and in the alternative,
4 LG Chem alleges that the party who sold the hoverboard to Plaintiff's insured, the
5 third-party seller, any other entity who designed, manufactured, or sold the
6 product at issue, and/or any unknown third persons, caused Plaintiff's damages.
7 LG Chem will identify such other persons as required by Rule 26(b)(5), of the
8 Arizona Rules of Civil Procedure, with the relative degree of fault, if any, to be
9 determined according to A.R.S. Section 12-2501, et seq.

10 53. As and for a separate and affirmative defense, and in the alternative,
11 LG Chem alleges that any sale of the hoverboard at issue in this matter was
12 done by a third-party seller, as well as a subsequent seller, and made to a
13 sophisticated user and therefore, Plaintiff's or its insured's claims may be barred
14 against LG Chem.

15 54. As and for a separate and affirmative defense, and in the alternative,
16 LG Chem alleges that Plaintiff's or its insured's claims are or may be barred by
17 the applicable statute of limitations or statute of repose.

18 55. As and for a separate defense, Plaintiff's Fourth Amended Complaint
19 fails to name necessary and indispensable parties necessary for full and
20 adequate relief, including but not limited to, the actual manufacturer and/or seller
21 of the product that allegedly caused Plaintiff's or its insured's purported
22 damages, if any.

23 56. Plaintiff's or its insured's claims may be barred in whole or in part by
24 the economic loss doctrine.

25 57. LG Chem asserts each and every affirmative defense set forth or
26 contemplated by the Arizona Products Liability Statute, A.R.S. §12-681, et seq.

1 58. LG Chem is entitled to all affirmative defenses available to LG Chem
2 under A.R.S. §12-683 to the extent Plaintiff or its insured and/or other persons
3 without LG Chem's knowledge and approval redesigned, modified, altered, and
4 used the product subject to this litigation contrary to instructions and contrary to
5 the custom and practice of the industry, and this redesign, modification,
6 alteration, and use so substantially changed the product's character that if there
7 was a defect in the product (which is specifically denied as to LG Chem), such
8 defect resulted solely from the redesign, modification, alteration, or other such
9 treatment or change and not from any act or omission by LG Chem.

10 59. As and for a separate defense, and in the alternative, LG Chem
11 alleges that Plaintiff's or its insured's damages, if any, were the result of the
12 negligence, carelessness, inattention, misuse, assumption of the risk, or
13 otherwise wrongful or unsafe act of Plaintiff's insured or family members, of the
14 original purchaser of the hoverboard who sold it to Plaintiff's insured, the third
15 party seller, any other entity that manufactured, designed or sold the product at
16 issue, or the joint or concurrent negligence of Plaintiff's insured over whom LG
17 Chem had no control or right of control; and Plaintiff's or its insured's damages, if
18 any, should be reduced or eliminated under the applicable state's Doctrine of
19 Comparative Fault and/or Contributory Negligence.

20 60. As and for a separate defense, and in the alternative, LG Chem
21 alleges that if it is determined that the manufacturer sold the product described in
22 Plaintiff's Complaint, the proximate cause of the incident given rise to this action
23 was an alteration or modification of the product, which was not reasonable or
24 foreseeable, and caused by a person other than LG Chem subsequent to the
25 time the product was manufactured and outside of LG Chem's control.
26

1 61. As and for a separate defense, and in the alternative, LG Chem
2 alleges that the proximate cause of the given incident giving rise to this action
3 was a use of the product for a purpose in a manner, or in an activity other than
4 that which was reasonably foreseeable or was contrary to any express and
5 adequate instruction or warnings attached to or delivered with the product about
6 which Plaintiff or its insured knew, or in the exercise of reasonable diligence,
7 should have known.

8 62. As and for a separate defense, and in the alternative, LG Chem
9 alleges that the hoverboard components at issue in this matter is designed,
10 manufactured, assembled, and tested in accordance with all applicable United
11 States governmental regulations and standards and that the subject hoverboard
12 components have been granted exemptions from certain regulations. Therefore,
13 Plaintiff's or its insured's claims are preempted by the Supremacies Clause of the
14 United States Constitution, and relevant statutes and regulations.

15 63. As and for a separate defense, and in the alternative, LG Chem
16 alleges that Plaintiff or its insured cannot show that any alleged alternative
17 design would render the product safer overall under the Restatement (Third) of
18 Torts: Product Liability, Section 2, cmt. f.

19 64. As and for a separate defense, and in the alternative, LG Chem
20 alleges that if discovery reveals Plaintiff or its insured failed to exercise
21 reasonable caution, and/or failed to follow provided guidelines and instructions,
22 the jury should be permitted to apportion fault to Plaintiff or its insured for failing
23 to do so, and Plaintiff's or its insured's claims should be barred or limited
24 accordingly.

25 65. As and for a separate defense, and in the alternative, LG Chem
26 alleges that Plaintiff's or its insured's negligence claim is subsumed by its product

1 liability claim - if Plaintiff or its insured cannot prevail on its product liability claim,
2 then as a matter of law, then it cannot prevail on the corresponding negligence
3 claim.

4 66. As and for a separate defense, and in the alternative, LG Chem
5 alleges that all or some of Plaintiff's or its insured's claims may be governed by
6 the laws of another jurisdiction pursuant to a choice of law analysis.

7 67. As and for a separate defense, and in the alternative, LG Chem
8 alleges, upon information and belief, that Plaintiff's or its insured's claims are
9 barred in whole or in part because Plaintiff or its insureds' intentionally or
10 negligently spoliated or failed to preserve crucial evidence. LG Chem asserts
11 that it will, at the appropriate time, seek one or more specific remedies, including
12 but not limited to, an adverse inference jury instruction, exclusion of claims and
13 evidence, and outright dismissal of Plaintiff's Complaint.

14 68. As and for a separate defense, and in the alternative, LG Chem
15 alleges that no additional warnings would have, or could have prevented the
16 alleged incident, the injuries, loss, and damages alleged by Plaintiff or its insured.

17 69. As and for a separate defense, and in the alternative, LG Chem
18 alleges that no different or alternative warnings would have, or could have,
19 prevented the incident, injuries, damages, and losses alleged in Plaintiff's
20 Complaint.

21 70. LG Chem incorporates by reference herein, as if fully set forth, all
22 defenses, both affirmative and otherwise, raised, pleaded, or asserted by all
23 other answering defendants.

24 71. Although LG Chem does not presently have specific facts in support
25 of its defenses, however, it wish to put Plaintiff or its insured upon notice that it
26 raises the following defenses which, through subsequent discovery may be

1 supported by the facts: lack of jurisdiction over the person, accord and
2 satisfaction, arbitration and award, discharge in bankruptcy, duress, estoppel,
3 set-off, failure to join an indispensable party, failure of consideration, fraud,
4 illegality, laches, license, payment, release, res judicata, statute of frauds, statute
5 of limitations, insufficiency of process and insufficiency of service of process and
6 waiver.

7 WHEREFORE, having fully answered Plaintiff's Fourth Amended
8 Complaint, LG Chem prays:

- 9 1. That the Fourth Amended Complaint be dismissed with prejudice;
10 2. That Plaintiff take nothing thereby;
11 3. That LG Chem be awarded all costs and/or attorney fees incurred
12 herein; and
13 4. The Court enter an award for such other and further to LG Chem as
14 it deems just and proper in the circumstances.

15
16 Dated this 30th day of July, 2018.

17 **O'CONNOR & CAMPBELL, P.C.**

18
19 By: /s/ Daniel J. O'Connor, Jr.
20 Daniel J. O'Connor, Jr.
21 Karen J. Stillwell
22 Attorneys for Defendant
23 LG Chem, Ltd.
24
25
26

CERTIFICATE OF FILING

I hereby certify that on July 30, 2018, I electronically transmitted the attached document to the Clerk's office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following registrants:

Timothy Moulton
The Moulton Law Firm, P.C.
6401 E. Thomas Rd., Suite 101
Scottsdale, AZ 85251
Attorney for Plaintiff

Scott McClure
Amy R. Levine
LEWIS BRISBOIS BISGAARD & SMITH LLP
2929 North Central Avenue, Suite 1700
Phoenix, Arizona 85012-2761
Attorneys for Defendant Amazon.com, Inc.

/s/ Erica Meany